NAIR v. CHIDAMBARAM

[A.C.J. (Ong J.) September 4, 1961]

[K.L. — Civil Appeal No. 4 of 1961]

Landlord and tenant — Control of Rent Ordinance, 1956, ss.2, 12(1)(l) and (m) — Whether erection of houses of temporary character on vacant land protected — "Premises" — Interpretation of

The appellant, who was let into possession of vacant land by the respondent's predecessor in title in or prior to 1947, had erected thereon houses of a temporary character early in 1947. In an action by the respondent for possession.

Held: (1) the proper interpretation of "premises" in section 2 of the Control of Rent Ordinance, simply postulates that there shall be a dwelling house or other building in which persons are employed or work; if so, the protection that the tenant enjoys in respect of the building extends "to any land, outbuildings and appurtenances occupied therewith";

(2) as the buildings were erected in 1947, they came within the definition of "premises" in the Ordinance and the land itself ceasing to be vacant land becomes appurtenant to "premises"; therefore the appellant is entitled to invoke the Ordinance against dispossession.

Cases referred to:—

(1) *Evelyn Saw Hee Li* v. *Gan Tit Sun* [1959] M.L.J. 146.

(2) *Khaw Joo Jeang* v. *Koay Seng Chye* [1960] M.L.J. 203.

(3) *Mayor Singh* v. *Lau Geok Swee* [1960] M.L.J. 285.

(4) *A.L.M.M. Muthukaruppan Chettiar* v. *Haji Ibrahim* [1941] M.L.J. 150.

(5) *Dilworth* v. *Commissioner of Stamps* [1899] A.C. 105, 106.

(6) *The Queen* v. *Bishop of Oxford* (1879) 4 Q.B.D. 245, 261.

(7) *Cowper Essex* v. *Acton Local Board* (1889) 14 App. Cas. 153, 169.

(8) *Veerapillai* v. *Ooi Swee Hoe* [1961] M.L.J. 260.

CIVIL APPEAL.

M. J. Mathew for the appellant.

S. D. K. Peddie for the respondent.

Cur. Adv. Vult.

Ong J.: The sole question for determination in this appeal is whether a tenant who entered into possession of vacant land and then proceeded to erect thereon buildings of a temporary character is a tenant entitled to claim the protection of the Control of Rent Ordinance, 1956. There is no dispute that the buildings were erected early in 1947 with permission by the then owner of the land.

There are no merits in the ground of appeal relating to service of the notice to quit, as the evidence abundantly justified the learned Magistrate's finding.

For the purposes of this appeal a bare statement of the essential facts as set out above requires no filling in with superfluous detail. What falls to be decided is the proper interpretation of "premises" in section 2 and its application to paragraph (*l*) in section 12(1) of the Ordinance.

The learned Magistrate rightly considered himself bound by authority and in the result held that the tenant was not entitled to invoke the Ordinance and made an order granting possession to the landlord. Against that decision the tenant has brought this appeal.

The point now raised had already been considered in Penang by Rigby J., for whose judgments I have the most profound respect, in *Evelyn Saw Hee Li* v. *Gan Tit-Sun*, [1] *Khaw Joo Jeang* v. *Koay Seng Chye*, [2] and *Mayor Singh* v. *Lau Geok Swee*. [3] I regret to say, however, that after anxious deliberation I have found myself compelled to take a different view.

The definition of "premises" reads:

> "Premises" means any dwelling-house, flat, factory, warehouse, office, counting house, shop, school and any other building in which persons are employed or work and any part of any premises let or sub-let separately and includes any land, outbuildings and appurtenances occupied therewith, but does not include —"

certain exceptions, with which we are not concerned here.

Rigby J., after painstaking research came to the conclusion in *Evelyn Saw's case* that he should follow the decision of McElwaine C.J. in *A.L.M.M. Muthukaruppan Chettiar* v. *Haji Ibrahim* [4]. He accordingly held:

> "In my view, on the definition of 'premises' as it now stands in the Control of Rent Ordinance, 1956, land. *qua* land, does not come within the definition of 'premises', and therefore if a person chooses to take a lease of a piece of land and build a house on it, whether it be with or without the consent of the owner of the land, he cannot thereafter avail himself of the protection of this Ordinance as it now stands."

He arrived at this result upon a comparison of the original definition of "premises" in the 1948 Ordinance (which is identical with the current definition); the 1949 amendment thereof whereby the definition was expressed to include "any land whereon any such building is or has been erected with the consent of the landlord"; the Bill of the 1956 Ordinance which preserved the 1949 amendment and finally the restoration in the 1956 Ordinance of the definition in its pristine form of 1948. His reasons were as follows:

> "Why this part of the definition was not included in the Ordinance itself must remain a matter of pure speculation. But it seems to me that the only inference that one is entitled to draw from its omission is that those responsible for its legislation came to the conclusion that it should be deliberately omitted. If that be so, it strengthens the argument that it was the deliberate intention of the legislature to revert to the position under the 1948 Ordinance and that land whereon buildings had been erected by a ground tenant, even with the consent of the landlord, should no longer be regarded as protected premises for the purposes of the Control of Rent Ordinance."

My own view is that *Muthukaruppan Chettiar's* case is hardly relevant since the learned Chief Justice of the then Straits Settlements expressly stated in his judgment: "*So far as this case is concerned* 'land' is not 'premises' and the plaintiff did not own the 'premises'." Moreover, the definition which he then had to consider was a different one from that which appears in our present Ordinance, it being in the following terms:

> "Premises" means any dwelling-house, flat, factory, warehouse, office, counting house, shop, school, and any

other building in which persons dwell or are employed or work, and any part of any premises let or sublet separately";

As to the proper construction to be placed on the existing definition, I would observe that the words "means" in conjunction with "and includes" imply that the meaning to be attached to "premises" is exhaustive for the purposes of the Ordinance: see *Dilworth* v. *Commissioner of Stamps*, [5] *per* Lord Watson. When the amendment of 1949 was made the phrase "any land, outbuildings and appurtenances occupied therewith" was substituted by another reading: "any land whereon any such building is or has been erected with the consent of the landlord." As between these two, it is clear that the scope of the definition in 1948 suffered a stringent reduction in 1949. *Expressio unius exclusio alterius*, so that when land built upon with the owner's consent became the only type of land which enjoyed the benefit of the definition, the exclusion applied not only to land built upon without such consent, but also to all other land whether or not appurtenant to "premises" properly so called. Restoration of the 1948 definition in the present Ordinance enlarges again the scope of the definition. The total exclusion of all land, except in the one specific case, which was the law until June 30, 1956 has been swept away. The proper interpretation of "premises." therefore. simply postulates that there shall be a dwelling-house or other building in which persons are employed or work; if so. the protection that the tenant enjoys in respect of the building extends to "any land. outbuildings and appurtenances occupied therewith". I think this is the logical interpretation because the words are expounded in their ordinary and natural sense; no occasion arises for speculation or inferences from earlier legislation as to the intention of the legislature. and paragraph (*l*) is rescued from futility and oblivion by being given full force and effect.

In *The Queen* v. *Bishop of Oxford* [6], Wackburn C.J., delivering the judgment of the Court said that it was a settled canon of construction "that a statute ought to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void or insignificant," and for my own part, I prefer in all possible cases to follow the *dictum* of Lord Bramwell in *Cowper Essex* v. *Acton Local Board* [7] so that "the words of a statute never should in interpretation be added to or subtracted from without almost a necessity."

In the instant case the appellant was let into possession of vacant land by the respondent's predecessor in title in or prior to 1947; he had erected thereon five houses which undoubtedly are of a temporary character as evidenced by their value; the date of erection brings these premises within the definition of "premises" in the Ordinance, and the land itself by ceasing to be vacant land becomes appurtenant to "premises." The appellant is consequently entitled to invoke the Ordinance against dispossession; and no case having been made out by the respondent under para. (1) or otherwise, this appeal is allowed with costs here and in the Court below: the deposit paid by the appellant to be refunded to him.

Since the preparation of the above judgment my attention has been drawn to a recent judgment delivered on June 16, 1961 in Penang High Court Civil Appeal No. 3 of 1961, *Veerapillai* v. *Ooi Swee Hoe* [8], in which Rigby J. has come to the conclusion that he would not follow his earlier decisions, though he was persuaded to this course for reasons other than those upon which I have reached, the same conclusion. In view of the concluding words in his judgment, I feel that it will not be out of place to leave my judgment as it stands.

Solicitors: *M. J. Mathew; Bannon & Bailey.*

Re JOSEPH LAI KHEE SIN

[O.C.J. (Ong J.) June 12, 1961]

[K.L. — Petition for Admission No. 37 of 1960]

Advocate and Solicitor — Admission — "Continuously attended and received instruction in law in the office in the Federation of a practising practitioner of not less than seven years' standing....." — Meaning of — Advocates and Solicitors Ordinance, 1947, s.5(3) — Non-compliance with.

The petitioner was called to the Bar of England on April 28, 1959 and subsequently attended the Post Final Practical Training Course conducted by the Council of Legal Education and had read for over six months in the Chambers of an English barrister. From September 12, 1960 to March 13, 1961, he read in the Chambers of Messrs. Allen & Gledhill and in his Declaration, affirmed that he had received instruction in law from Mr. M. B. Brash, Advocate and Solicitor, who practises with and acts as legal consultant to the said firm at its Kuala Lumpur Office. Mr. Brash was neither a partner nor an assistant in Messrs Allen & Gledhill, Kuala Lumpur, though he kept a room in the office of the firm.

Held: (1) the words "office in the Federation of a practising practitioner of not less than seven years' standing" in section 5(3) of the Advocates and Solicitors Ordinance, 1947, mean only the office at which he carries on his regular practice;

(2) the tenuous connection between Mr. Brash and Messrs. Allen & Gledhill does not qualify the office of that firm as one fulfilling the requirements of section 5(3).

Per Curiam: "Failure to enter a caveat under section 6(5) of the Ordinance does not disentitle the Bar Council and Bar Committee from proceeding by the alternative procedure of filing an objection as provided by section 6(7)."

Cases referred to:—

(1) *Re Richard Chuan Hoe Lim* [1936] M.L.J. 268.
(2) *Caledonian Railway* v. *North British Railway* (1881) 6 App. Cas. 114.

ADVOCATE & SOLICITOR'S PETITION.

R. H. V. Rintoul for the petitioner.
I. Talog-Davies for the Attorney-General.
Zain Azahari for the Bar Council.
S. T. Chung for the Bar Committee.

Ong J.: This petition for admission and enrolment of the petitioner as an advocate and solicitor of the Supreme Court of the Federation is opposed by both the Federation Bar Council